

D.T.E. 00-102

Petition of Bay State Gas Company for approval by the Department of Telecommunications and Energy of a Gas Supply Contract pursuant to M.G.L. c. 164, § 94A.

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APPEARANCES

Frank P. Pozniak  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, Massachusetts, 02110-3319  
FOR: BAY STATE GAS COMPANY  
Petitioner

## I. INTRODUCTION

On November 10, 2000, Bay State Gas Company (“Bay State” or “Company”) petitioned the Department of Telecommunications and Energy (“Department”), pursuant to G.L. c. 164, § 94A, for the approval of a gas supply contract (“Peaking Service Agreement”) that Bay State had executed with El Paso Merchant Energy - Gas L.P. (“El Paso”), successor in interest to El Paso Marketing Company.<sup>1</sup> The Department docketed this matter D.T.E. 00-102.

Pursuant to notice duly issued, a public hearing and an evidentiary hearing were held at the Department’s offices in Boston on January 31, 2001. There were no petitions to intervene in this matter. In support of its petition, the Company offered the testimony of Francisco DaFonte, the Company’s director of gas control. The evidentiary record consists of one Company exhibit, eighteen Department exhibits, and three responses to the Department’s record requests. The Company also submitted a brief on February 21, 2001.

## II. DESCRIPTION OF THE CONTRACT

In its filing, Bay State indicated that the Peaking Service Agreement amended a previous one-year Peaking Service Agreement between the Company and El Paso (BSG-1).<sup>2</sup>

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- 1 On November 10, 2000, the Company filed a Motion for Protective Treatment of Confidential Information (“Motion”) requesting that pricing information in the Peaking Service Agreement between the Company and El Paso be protected from public disclosure. On January 31, 2001, the hearing officer granted the Motion.
  - 2 The previous agreement did not require review under G. L. c. 164, § 94A because that contract was only for one year in duration. The proposed amendment is subject to review because the Peaking Service Agreement extends over a three-year period.

Under the terms of the proposed Peaking Service Agreement, Bay State must notify El Paso on or before August 1, prior to the beginning of the peak gas season, whether the Company intends to use the resource during the upcoming heating season (id.). If the Company intends to use this Peaking Service Agreement, Bay State must pay El Paso an agreed upon reservation charge in three equal installments throughout the peak gas season and a per unit commodity charge for all volumes consumed (id.). El Paso would then have to deliver, upon demand, 45,000 dekatherms (“Dth”) for any 30 days between December and February (id.). If the Company did not intend to use this resource, the Company would still have to pay El Paso an option charge by August 15 of each year (id.).

The Company states that this Peaking Service Agreement provides additional flexibility to its portfolio because the Company may choose not to use the Peaking Service Agreement for one year, but will still have the resource available for the following year (id.). Furthermore, the Company states that the Peaking Service Agreement has no minimum take requirement (id.).

### III. STANDARD OF REVIEW

In evaluating a gas utility’s resource options for the acquisition of commodity resources as well as for acquisition of capacity under G.L. c. 164, § 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity or incremental resource is consistent with the public interest, a local distribution company (“LDC”) must show that, at the time of the acquisition or contract renegotiation, the acquisition: 1) compares favorably to the range of alternative options reasonably available to the

company and its customers, including releasing capacity to customers migrating to transportation, and 2) is consistent with the company's portfolio objectives. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to the portfolio objectives established in a recently approved forecast and supply plan, or in a recent review of a supply contract under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource acquisition. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines the relevant price and non-price attributes of each contract to ensure that it contributes to the strength of the overall supply portfolio. Id. at 28. As part of the review of the relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broader range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nomination and reliability and diversity of supplies. Id. at 29.

#### IV. EVALUATION OF COMPANY'S PROPOSAL

Bay State asserts that this Peaking Service Agreement is in compliance with the Department's standards concerning supply contracts. The Company states that this Peaking Service Agreement is the least cost resource and is reliable, flexible, maintains portfolio diversity and is the lowest price resource available (Exh. DTE 1-4).

A. Comparison to Alternative Options

1. Company's Position

Bay State did not issue a request for proposals ("RFP"). The Company states that the Peaking Service Agreement was a unique opportunity for the Company (Tr. at 12). Bay State indicates that it saw the opportunity to transform an expensive annual cost into a less expensive demand charge (id. at 10). According to Bay State, this opportunity involved permanently releasing 45,000 Dth to El Paso but gaining access to 45,000 Dth for any 30 days during the peaking season (id. at 12). The Company also claims that, in addition to El Paso, there are suppliers of peaking services engaged in business in Massachusetts (id. at 22). However, according to Bay State, no other supplier could provide the flexibility and reliability that El Paso offers in the Peaking Service Agreement (id. at 10). Therefore, the Company did not consider and did not compare alternative options (id. at 15, 16).

2. Analysis and Findings

The Department's regulations and policies exist to ensure that the public interest is protected. See G. L. c. 164, § 94A. In particular, the statute states, inter alia, that no gas company shall enter into a contract for the purchase of gas covering a period in excess of one year without the approval of the Department unless the contract has a provision subjecting the price to be paid for gas to review and determination by Department in any proceeding brought under §93 or §94.

In D.P.U. 94-174-A, the Department stated that in evaluating a gas utility's:

options for the acquisition of capacity as well as commodity resources under G. L. c. 164, §94 A, the Department will evaluate whether the acquisition of the resource is consistent with the public interest. In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must demonstrate that the acquisition . . . compares favorably to the range of alternative options

reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of acquisition or contract renegotiations. D.P.U. 94-174-A at 27.

The Company chose to ignore the Department's policies and regulations. Massachusetts LDCs routinely issue solicitations to suppliers in order to determine their ability and willingness to provide service (See Fall River Gas Company, D.T.E. 99-88, at 5 (2000);<sup>3</sup> Berkshire Gas Company, D.T.E. 98-110 (1999)).<sup>4</sup> This approach allows both the LDCs and the Department to determine whether the particular contract under review compares favorably to the range of alternative options reasonably available to the company. By not issuing an RFP, Bay State could not compare the proposed Peaking Service Agreement with other potential offerings in the market. The Peaking Service Agreement may be the best deal that the Company could have received from El Paso, but not the market in general. There is nothing in the record to support a finding that the proposed Peaking Service Agreement is the least cost resource available to the Company.

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- 3 When Fall River Gas Company sought to replace its expiring short-term contracts as well as its long-term gas supply contracts in the fall of 1999, the company stated that it issued a target solicitation by mail to twelve suppliers that would be able to provide a combination of vapor and liquid service to determine their willingness to provide service. Fall River Gas Company, D.T.E. 99-88 at 5. The company received five proposals that included 19 bid alternatives. The Department found that the company selected a resource that compared favorably to the range of market alternatives because the company went through the RFP process.
- 4 When Berkshire Gas Company sought to replace its short term LNG contract in the fall of 1998, the company stated that it issued a target solicitation by mail to nine suppliers that would be able to provide a combination of vapor and liquid service to determine their willingness to provide service. Berkshire Gas Company, D.T.E. 98-110 at 4. The Department found that the company selected a resource that compared favorably to the range of market alternatives because the company went through the RFP process.

The record indicates that the Company was aware of other suppliers of peaking supply services in Massachusetts, yet Bay State failed to issue an RFP to any of the alternative suppliers (Tr. at 22). The Company failed to explain why it did not request information from these suppliers. Simply stating that the Company did not seek alternative market options because it believed that the current offer was the best it could acquire is unacceptable.

Bay State cannot persuasively label an agreement favorable when the Company did not make an attempt to acquire knowledge of the alternative options available in the market. Without more, the Company's assertion is mere ipse dixit. Therefore, the Department finds that Bay State has not shown that it selected a resource that compares favorably to the range of alternative options reasonably available to the Company.

Accordingly, the Department finds that Bay State has not demonstrated that the Peaking Service Agreement does, in fact, minimize gas supply costs because the Company failed to provide the Department with evidence that demonstrates that the Peaking Service Agreement is the lowest cost resource.

Having found that the Company failed to demonstrate that the Peaking Service Agreement is the least cost resource, we will not continue with our review of this Peaking Service Agreement as it pertains to the non-price criteria such as flexibility of nomination and reliability and diversity of suppliers.

V. ORDER

After due notice, a hearing and consideration, it is

ORDERED: that the Peaking Service Agreement between the Company and El Paso is hereby denied; and is

FURTHER ORDERED: that the Company follow Department regulations and procedures in procuring future peaking service and supply contracts that are for a period greater than one year.

By order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan Jr., Commissioner

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Deirdre K. Manning, Commissioner



Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such a petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such a petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).